REMARKS

The present application contains claims 1-11, 13-24 and 26.

Applicants cancelled claims 12 and 25 without prejudice or disclaimer.

The claims 1-11, 13-24 and 26. have been amended to a scope commensurate with the support of the specification, to better describe the embodiments of the present application. No new matter has been introduced by way of the amendment.

The Office rejected claims 1-5 and 10-26 under 35 U.S.C.§103(a) as being unpatentable over US Patent 6,052,379 to Iverson et al., hereinafter referred to as Iverson; and in view of US Patent 5,596,576 to Milito et al., hereinafter referred as Milito.

The Office further rejected claims 6-9 under 35 U.S.C.§103(a) as being unpatentable over Iverson, in view of Milito, and further in view of US Patent 6,381,214 to Prasad et al., hereinafter referred as Prasad.

Applicants respectfully traverse the rejections.

The applied references fail to disclose or suggest the inventions defined by Applicants' claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

Compared to the claimed embodiment of the present application, Iverson at least does not teach or suggest the following limitations:

<u>The second transmission rate is set to zero when the fill condition of the first bucket is above a predetermined level.</u>

Amended claim 1 is directed to a data traffic policer comprising a classifier, a first bucket and a second bucket. The classifier separates a packet stream into a first class of traffic to berepresented by a first bucket as a first transmission rate and a first burst capacity, and to be represented by a second bucket as a second transmission rate and a second burst capacity. The first bucket represents the first transmission rate and first burst capacity for the first class of traffic. The second bucket represents the first transmission rate and first burst capacity for the second class of traffic, and is subordinate to the first

transmission rate and the first burst capacity. The second transmission rate is set to zero when the fill condition of the first bucket is above a predetermined level.

Claim 14 is a method claim and generally parallels claim 1.

Therefore, the claimed embodiment has a limitation that the transmission rate for the second bucket is zero if the fill condition of the first bucket is above a predetermined level. *See* also, for example, page 3, lines 24-32 of the present application.

In other words, the the first class of traffic will only be eligible for transmission if the fill condition of the first bucket is above a predetermined condition.

Iverson teaches a mechanism for low latency packet-based bandwidth delivery in a TDM system using a priority scheme based on a "leaky bucket" mechanism. The priority scheme uses the "water level" in the leaky bucket priority scheme to assign priority within a high or low priority band. In Iverson, the second bucket will have a transmission rate that is independent of the first bucket.

In fact, Iverson teaches away from Applicants' invention in the exclusivity for the first class traffic in the first bucket, where Iverson specifically states that users are guaranteed a minimum traffic rate or Committed Information Rate (CIR), s*ee* column 2, lines 28-30 of Iverson; all users will be throttled to the same percentage of their CIR when congestion occurs.

The buckets represent different classes of traffic

The buckets in the present application are used to represent different classes of traffic. For example, in one embodiment a first leaky bucket represents a committed traffic class, a second leaky bucket represents certain forwarding classes. Therefore, the fill level in the buckets is an indication of seperate traffic flows. *See* for example, page 3, lines 24-25, and page 5, line 23 to page 6, line 31 of the present application.

In Iverson, the water level in the first bucket represents the current bandwidth delivery rate for the user and the water level in the second bucket represents the amount of excess bandwidth credit accumulated for the user connection overflowing from the first bucket. *See* column 2, lines 29-30, 44-45 and 59-62; and column 17, line 24 to column 18 line 67 of Iverson.

Furthermore, the overflow of the first bucket is added to the second bucket in Iverson. *See* column 19, lines 6-7, of Iverson. Therefore, the flow amongst the two buckets in Iverson are the same. This is the opposite of the present invention where the two buckets represent separate flows.

It should be apparent to a person skilled in the art that the buckets in the present application and the buckets in Iverson are non-analogous.

Data traffic policer

The present application is directed to a policer which monitors the data stream and identify violations of the constraints imposed on the data network, for example throughput, and is different from the schedulers and data shapers which effect changes in the makeup of the data stream. *See* page 1, lines 12-15 of the present application.

Iverson provides a mechanism for packet-based bandwidth delivery to the TDM system controlled by a priority assigned to user traffic.

It should be apparent to a person skilled in the art that Iverson is unrelated to a policer.

Milito describes a method for allocating access to a shared limited resource among users. Each user is granted access to the resource at a minimum guaranteed rate associated with each user.

Prasad describes a traffic shaping function in which the memory requirements are greatly reduced.

Milito or Prasad does not overcome the basic deficiencies of Iverson.

To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In *re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). “All words in a claim must be considered in judging the patentability of that claim against the prior art.” In *re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). The Examiner has not met his burden as at least the foregoing elements of the claim are not taught or suggest by the prior art.

Claims 2-10, 13, 15-23, and 26 are dependent claims which further distinguish the invention, and which are allowable for the same reasons as their respective independent base claims.

Applicants respectfully request reconsideration and withdrawal of this rejection in view of the amendments made herein and the following comments.

Applicant respectfully requests reconsideration of this application, based on the foregoing amendments and remarks.

Respectfully Submitted,

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